

1 on cross-examination. But I don't -- I think your intent is  
2 to get the witness's statement. And I think the best way to  
3 do it is just to ask him why they did it this way --

4 MR. HONIG: Let me ask it that way. But I, I  
5 don't -- I may lead, but I'll see where, where he goes that  
6 way. Why did you proceed to contact these five sources,  
7 that's what I mean by recruiting that way, for these two  
8 vacancies?

9 WITNESS: We were trying to target the African  
10 American community.

11 BY MR. HONIG:

12 Q Now what was the reason that you -- would it -- just  
13 to button this up, were you trying to especially target them  
14 more so than you might have for other openings?

15 A No.

16 Q But you just testified that these were the only two  
17 openings that you contacted all five of those sources. Isn't  
18 that right?

19 A That's right.

20 Q Now so it would be accurate then to say that you  
21 proceeded for those two openings in a different way than you  
22 proceeded for other openings before that. Isn't that right?

23 A We were becoming more aggressive toward target  
24 recruiting. That would be correct.

25 Q Now what happened -- did, did something happen that

1 caused you to adopt this different approach?

2 A Yes.

3 Q And what was that?

4 A A couple of things happened. We began to recruit  
5 more vigorously. And the second thing that happened was we  
6 did receive the petition to deny the license. And we felt  
7 that we should specifically target, begin specific targeting  
8 for recruitment.

9 Q Now you, you mentioned two things. When you say  
10 recruit, you began to recruit more vigorously, more  
11 specifically do you mean recruit generally, or were there more  
12 openings? What did, what did you mean by recruit more  
13 vigorously?

14 A Toward the end of the license term, we did more  
15 advertising in the generic publications, Broadcasting, St.  
16 Louis Post Dispatch.

17 JUDGE STEINBERG: Advertising for job openings?

18 WITNESS: For job openings.

19 BY MR. HONIG:

20 Q All right. But, but did you advertise for those two  
21 job openings in the Post Dispatch and Broadcasting?

22 A We didn't in Broadcasting. I don't recall if we did  
23 in the St. Louis Post Dispatch. Oh, I know we did in the --  
24 there was a new St. Louis daily at the time. The Sun I  
25 believe.

1 Q Okay.

2 A I believe I recall seeing that, that referral source  
3 checked.

4 Q St. -- is the St. Louis Sun a black newspaper?

5 A No, it was the second daily introduced into St.  
6 Louis.

7 Q Okay. Now after the petition to deny was filed,  
8 whose idea was it to then as you testified respond in, in part  
9 with the procedures you've just testified to?

10 A Well, I think the station as a whole felt it should  
11 advertise toward the African American community. But I  
12 supported that.

13 Q But did someone say there's been a petition to deny  
14 filed, and the station ought to undertake these additional  
15 efforts? Did someone come up with that idea that way or  
16 something like it?

17 A Well, I think we felt we should take additional  
18 efforts, yes.

19 Q But, but who is we? The, the names of the -- the  
20 name of the person or persons who, who germinated that idea.

21 A Well, I specifically thought we should take  
22 additional efforts.

23 Q Was, was this done on advice of counsel?

24 A I don't think so, no.

25 MR. HONIG: Okay. Okay. Just a minute. I'm doing

1 what's called moving to another area. So you have to give me  
2 just a second.

3 JUDGE STEINBERG: So you've got, you've got a place  
4 in Miami, a place in Washington, and now you're moving to a  
5 different area, a third place?

6 MR. HONIG: Intellectual, not geographical.

7 JUDGE STEINBERG: Okay. Sometimes I can't resist.

8 MR. HONIG: You are always allowed.

9 BY MR. HONIG:

10 Q Okay. Turn if you would to page 12 in your written  
11 testimony. There in paragraph 17 on the eighth line down  
12 you'll see the sentence beginning in 1986 or 1987 stations  
13 also posted openings at the Church's International Center  
14 whose employees were approximately 11.5 percent minority.  
15 What is the source for the assertion regarding 11.5 percent  
16 minority?

17 A The Church does a form that lists their employment.  
18 And that's the source.

19 Q And is that number accurate as of 1986 or 1987, or  
20 is that a subsequent figure?

21 A To my knowledge, that's correct in 1986 or 1987.

22 Q And does that include full-time and part-time  
23 employees?

24 A I don't know that.

25 Q All, all categories of employees to managers, to

1 secretaries and janitors all included?

2 A I presume so.

3 Q Okay. Now in -- turn if you would to tab 9 of your  
4 declaration. There you will see various classified  
5 advertisements, 12 pages of them. Are these all of the copies  
6 of classified advertisements in this, for during the license  
7 term in the station's files? Or is this simply intended as a  
8 representative sample? Or a sample?

9 A Well, I don't believe -- well, let me double  
10 check --

11 MS. SCHMELTZER: -- they're not all ads. Some are  
12 letters.

13 MR. HONIG: Ads or -- well --

14 JUDGE STEINBERG: It says advertising efforts. See  
15 attachment 9 for evidence of certain of the station's  
16 advertising efforts.

17 MR. GOTTFRIED: But his question was if evidence  
18 which he's trying to compile -- okay, what these are is all  
19 the, all the copies, the only copies of ads that we could find  
20 in our files. Letters indicating other ads of which we  
21 couldn't find copies but not all the letters indicating the  
22 same ads. That's where the couple letters were used. If  
23 there was an ad in the Post Dispatch or -- couple of  
24 letters -- different Post Dispatch ad.

25 JUDGE STEINBERG: So it's not --

1 MR. GOTTFRIED: It's all we could find in our files  
2 that had somehow survived.

3 BY MR. HONIG:

4 Q Okay. And the question then to the witness -- next  
5 question is were there other ads that you recall other than  
6 the ones either contained or spoken of in tab 9?

7 A Well, I think I just mentioned the St. Louis Sun.  
8 Maybe that was for a different job later. I'll, I'll take  
9 that out. We did advertising after January 1990. So I can't  
10 verify that for sure. Do we do other ads is the question?

11 (Pause.)

12 A Well, I know we did other advertising in the  
13 Lutheran publications, the Lutheran Witness. That's not in  
14 here.

15 Q Okay. Were these all or most of the ads in secular  
16 publications?

17 A These?

18 Q Yes.

19 A I, I would think they would be most.

20 JUDGE STEINBERG: You don't really know for sure --

21 WITNESS: No.

22 MR. HONIG: Now turn back to your declaration if you  
23 would, and turn to page 13. There in paragraph 19, the first  
24 two sentences, you state, "Over the years, Arnold & Porter had  
25 written to the stations on several occasions apprising them

1 about the status of pending EEO proceedings or developments.  
2 Each of these letters appeared to be a form letter presumably  
3 sent to Arnold Porter's FCC clients." Now --

4 JUDGE STEINBERG: Okay, you left out the word "all".  
5 Sent to all of them.

6 MR. HONIG: To all -- I'm sorry. To all --

7 JUDGE STEINBERG: That's okay.

8 MR. HONIG: -- of Arnold & Porter's FCC clients.

9 JUDGE STEINBERG: It's in the record. We can read  
10 it.

11 MR. HONIG: I am getting blind. Okay.

12 JUDGE STEINBERG: You need -- how old are you now?

13 MR. HONIG: Forty-four.

14 JUDGE STEINBERG: You need glasses. You're at that  
15 age. Personal observation --

16 MR. HONIG: Thank you.

17 JUDGE STEINBERG: -- which I'll strike if you want  
18 me to.

19 MR. HONIG: No.

20 JUDGE STEINBERG: Okay.

21 MR. HONIG: That will remind me when I read the  
22 transcript of findings to go get -- because I will go blind  
23 writing these findings if I'm not already.

24 Now this statement -- each of these letters appear  
25 to be a form letter. Presumably sent to all of Arnold &

1 Porter's FCC clients is a statement of your opinion. Isn't  
2 that right?

3 WITNESS: Yes.

4 MR. HONIG: Now when did you form that opinion?

5 WITNESS: Well, I formed that opinion throughout the  
6 license term from letters that I had received.

7 MR. HONIG: Now the -- was the station paying Arnold  
8 & Porter to get these form letters?

9 MS. SCHMELTZER: Objection. Relevance.

10 JUDGE STEINBERG: Overruled.

11 WITNESS: Station paid Arnold & Porter, yes.

12 MR. HONIG: For, for these letters? I mean when,  
13 when you got bills from Arnold & Porter, I don't want dollar  
14 amounts. And it said letter sent such and such date, and it  
15 was one of these letters. And there was a number of hours or  
16 minutes, you, you paid that.

17 WITNESS: Right.

18 MR. HONIG: Okay.

19 JUDGE STEINBERG: But were the bills in that form?  
20 Did, did you pay the bills? Or did you see them?

21 WITNESS: Occasionally I saw them.

22 JUDGE STEINBERG: Is that the form that they were  
23 in, letter dated such and such and then X number of hours,  
24 then amount? Or was it perhaps a retainer agreement?

25 WITNESS: It was more of a -- well --



1 JUDGE STEINBERG: Again if, if you don't know, say  
2 you don't know.

3 WITNESS: Most of the bills that I recall seeing  
4 during that time were services rendered in May, whatever the  
5 dollar amount was.

6 MR. HONIG: Did you understand services rendered as  
7 including the -- let me, let me put it this way. Do you, do  
8 you understand the concept client development? When, when the  
9 lawyer sends stuff to clients, doesn't charge him specifically  
10 for that, but it's just to let him know that the lawyer isn't  
11 dead and inform him of important things and -- they're not  
12 billed specifically.

13 MS. SCHMELTZER: Objection. Client development is  
14 a, first of all requires a legal conclusion from the witness.  
15 And secondly, client development can mean different things to  
16 different firms. Client development can mean going out and  
17 getting new clients.

18 MR. HONIG: It can mean that too.

19 JUDGE STEINBERG: Well, let's just -- I don't see  
20 where this is getting us anywhere. He testified that he got  
21 letters. They -- throughout the license term. And they  
22 appeared to him to be form letters sent to all the FCC  
23 clients. And let's just go from there. What difference does  
24 it make --

25 MR. HONIG: Let me tell you where I'm going --

1 JUDGE STEINBERG: -- how they paid for it?

2 MR. HONIG: Let me tell you where I'm going with  
3 this. The, the implication here is that they were of  
4 diminished importance because they were form letters and --

5 JUDGE STEINBERG: Well, ask if because he thought  
6 they were form letters he paid less attention to them.

7 MR. HONIG: That's a good question.

8 WITNESS: We received a lot of letters from Arnold &  
9 Porter on numerous topics. They did not all receive my  
10 personal attention.

11 MR. HONIG: You know, actually, Your Honor, this  
12 might be an appropriate time to do this exercise with these  
13 exhibits, because some of the letters are in the Bureau's  
14 exhibits, and some of the letters are in my exhibits, and some  
15 are in both because the Bureau had just a few pages, and I  
16 want to put in all the attachments. And so this might be a  
17 good time to get those in, because I may want to talk about  
18 particular letters.

19 JUDGE STEINBERG: It's up to you.

20 MR. HONIG: I know this is a little bit of a break  
21 and I'll -- I'd like to come back to, to this point in the  
22 testimony. But it will probably go a lot easier if we do that  
23 now.

24 JUDGE STEINBERG: Fine.

25 MR. HONIG: Okay.

1 JUDGE STEINBERG: Just -- let's go off the record.  
2 (Off the record. Back on the record.)

3 JUDGE STEINBERG: Okay, Mr., Mr. Honig.

4 MR. HONIG: Okay. Why don't I just offer each of  
5 them in turn. Exhibit --

6 JUDGE STEINBERG: Now, now let me just say that is  
7 it true that during luncheon recess -- I'll ask Mrs.  
8 Schmeltzer. During luncheon recess, Mr. Stortz looked at  
9 these documents that we're going to be talking about and has  
10 essentially authenticated them?

11 MS. SCHMELTZER: Well, some. Not absolutely  
12 everything.

13 JUDGE STEINBERG: Okay. But I mean he -- during the  
14 recess he has looked at them.

15 MS. SCHMELTZER: Yeah, briefly.

16 JUDGE STEINBERG: Okay. Okay. Because we won't --  
17 if it's necessary to ask Mr. Stortz specific questions we'll  
18 do it. But we won't do it routinely for every exhibit.  
19 That's the point that I was trying to make.

20 MR. HONIG: Okay.

21 JUDGE STEINBERG: Okay.

22 MR. HONIG: Okay. Exhibit No. 24 is offered.

23 MS. SCHMELTZER: Your Honor, we have no objection  
24 except that we think that the exhibit should also include the  
25 1990 annual employment report since that reflects the pay

1 period, 2-week pay period ending January 31, 1990 still within  
2 the license term. I have made copies of that report, and that  
3 could come in as a Church exhibit, or Mr. Honig could reform  
4 his exhibit, however you want to do it.

5 MR. HONIG: I'd just as soon it came in as, as a  
6 Church exhibit and we'll --

7 JUDGE STEINBERG: Let's, let's keep it separate --

8 MR. HONIG: -- we'll --

9 JUDGE STEINBERG: Yeah, we'll keep it separate.

10 MR. HONIG: Yeah.

11 JUDGE STEINBERG: But it will what be Church Exhibit  
12 10 probably?

13 MS. SCHMELTZER: You want to do it right now?

14 MR. HONIG: Why don't we do it now?

15 JUDGE STEINBERG: Okay, let's -- we'll finish 24.  
16 So there's no objection to 24?

17 MS. SCHMELTZER: That's correct.

18 JUDGE STEINBERG: Twenty-four is received.

19 MS. LADEN: Just a moment, Your Honor.

20 JUDGE STEINBERG: Okay.

21 MR. ZAUNER: Okay, no objection to 24.

22 JUDGE STEINBERG: Twenty-four is received.

23 (Whereupon, the document referred to  
24 as NAACP Exhibit No. 24 was received  
25 into evidence.)

1 (Asides.)

2 JUDGE STEINBERG: Okay. Now let's -- do you want to  
3 do -- while we're all -- while it's in the same spot, why  
4 don't you, Mrs. Schmeltzer, identify Church Exhibit 10.

5 MS. SCHMELTZER: I would like to have marked for  
6 identification as Church Exhibit 10 a three-page document.  
7 The first page is a letter from Marcia Cranberg to Ms. Donna  
8 Searcy of the FCC dated May 30, 1990. And the next two pages  
9 consist of the FCC Form 395B for 1990. And I'm going to hand  
10 an original and one to the reporter and give copies --

11 JUDGE STEINBERG: Thank you. Okay, the document  
12 described was marked for identification as Church Exhibit No.  
13 10.

14 (Whereupon, the document referred to  
15 as Church Exhibit No. 10 was marked  
16 for identification.)

17 MS. SCHMELTZER: And I ask that Church Exhibit 10 be  
18 received in evidence.

19 JUDGE STEINBERG: Any --

20 MR. HONIG: No objection.

21 MR. ZAUNER: No objection.

22 JUDGE STEINBERG: Church Exhibit 10 is received.

23 (Whereupon, the document referred to  
24 as Church Exhibit No. 10 was received  
25 into evidence.)

1 (Pause. Asides.)  
2 MS. SCHMELTZER: Think the next one is --  
3 MR. HONIG: NAACP Exhibit 27 is offered.  
4 MS. SCHMELTZER: Your Honor, we have no objection --  
5 UNIDENTIFIED SPEAKER: Now what number was that?  
6 JUDGE STEINBERG: Two seven.  
7 MR. ZAUNER: Was that 27?  
8 MR. HONIG: Twenty-seven.  
9 MR. ZAUNER: Bureau has no objection.  
10 JUDGE STEINBERG: NAACP Exhibit 27 is received.  
11 (Whereupon, the document referred to  
12 as NAACP Exhibit No. 27 was received  
13 into evidence.)  
14 MR. HONIG: NAACP Exhibit 28 is offered.  
15 MS. SCHMELTZER: We have no objection.  
16 MR. ZAUNER: No objection.  
17 JUDGE STEINBERG: Exhibit 28 is received.  
18 (Whereupon, the document referred to  
19 as NAACP Exhibit No. 28 was received  
20 into evidence.)  
21 MR. HONIG: NAACP Exhibit 30 is offered.  
22 MS. SCHMELTZER: We have no objection.  
23 MR. ZAUNER: We have no objection.  
24 JUDGE STEINBERG: Exhibit 30 is received.  
25 (Whereupon, the document referred to

1 as NAACP Exhibit No. 30 was received  
2 into evidence.)

3 MR. HONIG: NAACP Exhibit 31 is offered.

4 MS. SCHMELTZER: Your Honor, I have no idea of the  
5 purpose for which this is being offered. And I also don't  
6 know whether this witness is competent or not to sponsor  
7 this --

8 MR. HONIG: The purpose for which this is offered is  
9 that this was a job application form that was in use for some  
10 of the license term. And I didn't want to offer it without  
11 offering it with the collateral materials that went with it.  
12 There's a data form, and there's the application for  
13 employment which is I think pages 3 and 4 -- I'm sorry. Four  
14 and five -- four rather of the exhibit.

15 If I recall though, I think that the Bureau may have  
16 already gotten one of these in. I don't, I don't know or care  
17 who the particular individual is. It's the form that I was  
18 concerned with. It is the, the new -- two forms really, the  
19 new employee data summary and the application for employment  
20 form.

21 MR. ZAUNER: What is the purpose of the new employee  
22 data summary?

23 MS. SCHMELTZER: Your Honor, I don't have, I don't  
24 have any objection to the actual application form which I  
25 think is 002507. But I don't see why the collateral

1 documents --

2 MR. HONIG: Yeah.

3 JUDGE STEINBERG: Okay. There's, there's -- that  
4 should be circled page no. 4. Is that -- which is cut off on  
5 my copy.

6 MR. HONIG: Yeah, it's --

7 MS. SCHMELTZER: Cut off on my copy too.

8 JUDGE STEINBERG: Yeah.

9 MR. HONIG: Yeah --

10 JUDGE STEINBERG: So we'll call that page 4 if  
11 everybody would just write a little 4 there.

12 MR. HONIG: I don't care about the collateral  
13 documents. I just didn't want to offer --

14 JUDGE STEINBERG: You just want page 4.

15 MR. HONIG: Page 1 and page 4.

16 MS. SCHMELTZER: -- not --

17 MR. HONIG: Page 1 is the new employee data summary.

18 MS. SCHMELTZER: But that's not an application form.

19 MR. HONIG: Well, it's associated with when a person  
20 is hired this is what's filled out. There's really two  
21 different forms in here that happen to relate to the same  
22 person. I didn't know whether -- I felt I needed to put in  
23 all the other stuff --

24 JUDGE STEINBERG: By, by whom is this page 1 filled  
25 out, do you know?



1 MR. HONIG: No, I don't know. And the point of the  
2 employee --

3 JUDGE STEINBERG: I'll tell you, I'll tell you why  
4 because I'm a layman. I'm not a handwriting expert. But it  
5 doesn't look like the same handwriting. So I would, you know,  
6 it's -- although Mr. Wesemann?

7 MR. HONIG: Wesemann.

8 WITNESS: Wesemann.

9 JUDGE STEINBERG: Mr. Wesemann signed, it looks like  
10 the same signature.

11 MR. HONIG: Well, you never know. The, the W in  
12 Wesemann --

13 JUDGE STEINBERG: No, I'm looking -- look at the  
14 numbers. The numbers don't even remotely resemble each other.

15 MR. HONIG: I don't care about the writings. I just  
16 don't have a copy of the blank forms, so I had to get some  
17 that had been filled out.

18 JUDGE STEINBERG: Well, that's true but what -- let  
19 me put it -- page 4 nobody has any problem with, correct?

20 MS. SCHMELTZER: That's correct.

21 MR. ZAUNER: Yes.

22 JUDGE STEINBERG: And Mr. Honig, you don't care  
23 about page 5, page 6 or page 7, is that correct?

24 MR. HONIG: That's right.

25 JUDGE STEINBERG: Okay. Can we consider 5, 6 and 7

1 withdrawn?

2 MR. HONIG: Yes.

3 JUDGE STEINBERG: Okay. Five withdrawn, six  
4 withdrawn, seven withdrawn. Now we'll work backwards. You  
5 care about -- you don't care about page 3.

6 MR. HONIG: No.

7 JUDGE STEINBERG: Can that be withdrawn?

8 MR. HONIG: We -- withdrawn them, withdraw page 3.

9 JUDGE STEINBERG: Okay, now we're down to pages 1  
10 and 2.

11 MR. HONIG: Which is the same forms.

12 JUDGE STEINBERG: Which look like the same form,  
13 right.

14 MR. HONIG: Filled out at different times.

15 JUDGE STEINBERG: Okay. Now, now we've narrowed  
16 the -- and --

17 MR. HONIG: But I'd, but I'd like both 1 and 2 in  
18 insofar as it, it brackets at least some of the time period  
19 when that form was used.

20 JUDGE STEINBERG: Oh, I see. One is filled out in  
21 '85, and one is filled out in '88.

22 MR. HONIG: Yeah. That's why we --

23 JUDGE STEINBERG: I, I mean why don't we -- at this  
24 stage I think -- I don't know what they are. Obviously I know  
25 what page 4 is. Page 4 says application for employment. And

1 nobody has any problem with page 4. Let me -- why don't you  
2 put in front of the witness pages 1 and 2 and see if he knows  
3 what they are.

4 MR. HONIG: Okay.

5 JUDGE STEINBERG: I don't.

6 MR. HONIG: All right.

7 JUDGE STEINBERG: Do you, Mrs. Schmeltzer, or --

8 MS. SCHMELTZER: No.

9 JUDGE STEINBERG: Okay.

10 MR. ZAUNER: The only objection I have, Your Honor,  
11 is if we put it in front of him and we ask questions about it,  
12 are you then going to receive it into evidence because  
13 questions were asked about the form? If that's going to be  
14 the case then --

15 JUDGE STEINBERG: You caught me in a, you caught me  
16 in a Catch-22 there, didn't you?

17 MR. ZAUNER: So I -- yeah, I think I did. I'm --

18 JUDGE STEINBERG: You did.

19 MR. ZAUNER: -- certain about that.

20 JUDGE STEINBERG: You did.

21 MS. SCHMELTZER: Well, no. We can't allow questions  
22 to be asked about it --

23 MR. HONIG: Well, but it's, it's offered -- I could  
24 have --

25 JUDGE STEINBERG: Yeah, you could have asked --

1 well, I won't do that in this case. Okay. I think I -- I may  
2 have been wrong about the other stuff. If I'm wrong, I'm  
3 wrong. I'll admit it. I have no desire to be stubborn.

4 MS. SCHMELTZER: Thank you.

5 JUDGE STEINBERG: But, but I mean Mr. Honig wants  
6 to -- he's offered these. He doesn't know what they are. I  
7 don't know -- do you, do you know what they are? I --

8 MR. HONIG: Yes.

9 JUDGE STEINBERG: Oh, you do?

10 MR. HONIG: Yeah.

11 JUDGE STEINBERG: How do you know what they are?

12 MR. HONIG: Well, let me find out from the  
13 witness --

14 JUDGE STEINBERG: Okay. If he knows.

15 MR. HONIG: Okay.

16 MS. SCHMELTZER: And, and I think he's got to  
17 establish --

18 JUDGE STEINBERG: Okay, yeah. That's second.

19 MR. HONIG: Okay. Okay. I'm placing before the  
20 witness pages 1 and 2 of NAACP Exhibit --

21 JUDGE STEINBERG: Thirty-one.

22 MR. HONIG: -- 31 and ask if you could tell me what  
23 these form are without reference to the particular individual  
24 who filled them out or whose name is reflected here. I know  
25 who filled it out.

1           WITNESS: Yeah, they are new employee data summary  
2 forms. It's a form that we fill out for new employees.  
3           MR. HONIG: Okay.  
4           JUDGE STEINBERG: When you say we, who is we?  
5           WITNESS: The, the person, Paula Zika, who, who  
6 keeps the personnel files at the station gets them filled out.  
7           JUDGE STEINBERG: You familiar with Ms. Zika's  
8 handwriting or printing?  
9           WITNESS: Yes, pretty much so.  
10          JUDGE STEINBERG: Do 1 and 2 look like her printing?  
11          WITNESS: No, I would suggest that they're the  
12 person that --  
13          JUDGE STEINBERG: Okay.  
14          WITNESS: -- signed it. I would --  
15          JUDGE STEINBERG: Okay.  
16          WITNESS: -- put those two together.  
17          JUDGE STEINBERG: Okay, you, you don't know then.  
18 If -- who --  
19          WITNESS: Not --  
20          JUDGE STEINBERG: -- completed the --  
21          WITNESS: Not 100 percent.  
22          JUDGE STEINBERG: But we're not interested in that,  
23 are we?  
24          MR. HONIG: I'm not interested --  
25          JUDGE STEINBERG: Okay. Forget, forget that.

1 That's, that's withdrawn.

2 MR. HONIG: Okay. Now, now 1 and 2 are, are --

3 JUDGE STEINBERG: Okay --

4 MR. HONIG: -- not withdrawn and are offered.

5 MS. SCHMELTZER: What is the purpose --

6 JUDGE STEINBERG: Okay, now --

7 MS. SCHMELTZER: -- of having --

8 JUDGE STEINBERG: -- 1 and 2 are the forms that are  
9 filled out by station employees or filled out by somebody when  
10 an individual is hired.

11 MS. SCHMELTZER: I'd like to --

12 JUDGE STEINBERG: Okay.

13 MS. SCHMELTZER: -- but I'd like to know why this  
14 should be in the record.

15 MR. HONIG: Sure. This form contains various  
16 questions which I, I think speak for themselves. I don't  
17 think I need to ask a lot of questions about them. Such as  
18 was immediate previous employment with an LCMS college  
19 district seminary, Camp OU, CHI or something I can't read?  
20 Yes. Where? Do you have relatives working here? Who? And,  
21 and then there the -- and then at the top it asks present  
22 address, pastor, teacher, lay worker, national origin. Those  
23 are the types of information which speak for themselves but  
24 are, are relative to the issues in this case.

25 MS. SCHMELTZER: I don't think they're relative.

1 Mr. Honig, you haven't ascertained whether or not the Church  
2 may have an anti-nepotism policy. So you don't know why  
3 they're asking that question about relatives.

4 MR. ZAUNER: The problem I have with it, Your Honor,  
5 is that the forms seem to be something that's filled out after  
6 the employee has been hired. And there's no indication that  
7 this resulted in any discrimination one way or the other with  
8 regard to any employee.

9 MR. HONIG: Well, Your Honor, it would be, it would  
10 be relevant insofar as part of the EEO rule relates to  
11 eligibility for promotion. And here is information that's  
12 being maintained on employees.

13 MR. ZAUNER: Your Honor, then I would --

14 MS. SCHMELTZER: Your Honor, you've already ruled  
15 that there is no issue in this case relevant to promotion.

16 JUDGE STEINBERG: That was during a deposition.

17 MS. SCHMELTZER: And, and we have no evidence --

18 JUDGE STEINBERG: Just, just --

19 MS. SCHMELTZER: -- that there's been  
20 discrimination --

21 JUDGE STEINBERG: Just, just bear with me. I'm  
22 looking for something. Darned if I know where it is.

23 (Pause.)

24 JUDGE STEINBERG: Look at Bureau -- Mr. Honig, look  
25 at Bureau Exhibit 25.

1 MR. HONIG: All right. Oh -- okay.

2 JUDGE STEINBERG: That asks about relatives employed  
3 by this Synod, Synod if I pronounced it correctly. But I, I  
4 think Mr. Zauner is correct in that this is something that was  
5 filled out after --

6 MR. HONIG: That's right.

7 JUDGE STEINBERG: -- after an individual was already  
8 employed. So I don't see how it goes to the question of  
9 possible discrimination in, in hiring or affirmative action.

10 MR. HONIG: Well, let me, let me --

11 JUDGE STEINBERG: And you, you mentioned promotion.  
12 And we have this -- I think I ruled during the deposition  
13 that, that we're not going to inquire into that. There, there  
14 have been no specific facts alleged in any, that there was any  
15 problem with the promotion practices of the station. The HDO  
16 was totally silent on that. And I'm going to say that that's  
17 beyond the scope of the issue recognizing that, that 2080B,  
18 Section 17.2080B talks about promotion. But I don't think --  
19 I don't see that that's within the scope of the issue.

20 MR. HONIG: But --

21 JUDGE STEINBERG: So how, how is this --

22 MR. HONIG: -- there's no other reason. And this --  
23 and in fact it's fortunate that we have this particular  
24 individual. This is a person who was, for whom a form was  
25 filled out in '85 and another one in '88. So he was rehired.



1 And to the extent that material is in the station's files as  
2 to a previous employee which contains this information even if  
3 the station never promoted a single person or promotion is, is  
4 irrelevant, to the extent that it becomes information that the  
5 station knows or when a person applies to be hired again, it's  
6 germane to the issue.

7 JUDGE STEINBERG: I don't, I don't follow that. And  
8 I'm, I'm not going to receive pages 1 and 2. They have not  
9 shown to be relevant to, to the issues. I rule Exhibit 31,  
10 page 4 is received.

11 (Whereupon, the document referred to  
12 as NAACP Exhibit No. 31 was received  
13 into evidence.)

14 JUDGE STEINBERG: I'm not -- I was going to say  
15 something else about it's possible that -- how do we know the  
16 individual was rehired? Maybe they just said okay, we have to  
17 update --

18 MS. SCHMELTZER: I believe he was.

19 JUDGE STEINBERG: He was? Okay. I mean that --  
20 even that I don't know. So what did I say, page -- this  
21 Exhibit 31, page 4 is received.

22 (Pause.)

23 JUDGE STEINBERG: Okay. What's the next one?

24 MR. HONIG: Ready for the next one? Okay --

25 MS. SCHMELTZER: I believe it's 33.